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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947.

No. 795

MILWAUKEE MECHANICS' INSURANCE COMPANY, a corporation,

Petitioner,

vs.

WILLIAM B. MacDONALD and VICTORIA MacDONALD, doing business as ELGAR COACH,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947.

No.

MILWAUKEE MECHANICS' INSURANCE COMPANY, a corporation,

Petitioner,

vs.

WILLIAM B. MacDONALD and VICTORIA MacDONALD, doing business as ELCAR COACH,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States.

Your petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

This is an action at law brought in the United States District Court by William B. MacDonald and Victoria

MacDonald, doing business as Elcar Coach, respondents, against Milwaukee Mechanics' Insurance Company, a corporation, petitioner herein, to recover damages for loss by fire, under an alleged oral contract for fire insurance. The trial was by jury and a verdict and judgment was entered in favor of respondents. An appeal from said judgment was taken by petitioner to the United States Circuit Court of Appeals, for the Seventh Circuit, which Court, on March 10, 1948, affirmed the judgment of the United States District Court. A petition for rehearing was filed by the petitioner. On April 12, 1948, the United States Circuit Court of Appeals, for the Seventh Circuit, denied said petition for rehearing.

The principal questions involved on said appeal were, (a) whether an insurance agent's license issued by The Illinois State Department of Insurance, pursuant to Sections 587 to 612 of Chapter 73, Revised Statutes of Illinois, 1947 Bar Assoc. Ed. (an Act adopted in Illinois in 1936), conferred upon an employee of an insurance company any authority not expressly granted to him by his company, and (b) the question whether, when the authority of such alleged agent is in dispute, a trial court is required to submit to the jury the issue as to the extent of the agent's authority.

The United States District Court held, as a matter of law (Trans. 62a, 92), that the *mere issuance* of the agent's license under the Illinois Act of 1936 made the holder a general agent of the insurance company with full power to bind the company to contracts of insurance, so that there was no question of fact to be submitted to the jury as to the extent of the agent's authority, even in face of proof that (a) the alleged agent was never granted authority by the insurance company to bind the company to contracts of insurance (Trans. 48), (b) the alleged

agent was superintendent of the bond department of related companies (Trans. 52, 56, 75), (c) the alleged agent was merely a contact man between agents, brokers and the company (Trans. 47), and (d) respondents' broker *never before* placed an order for fire insurance with the alleged agent but had *always* placed such orders through other employees in petitioner's underwriting department (Trans. 42). There was no proof that the alleged agent ever at any time had entered contracts of insurance on behalf of the insurance company, and no proof that respondents or their broker knew that the license was issued to the alleged agent.

II.

Jurisdictional Statement.

The jurisdiction of this Court is invoked under Section 240 of the United States Code, as amended (United States Code, Title 28, Sec. 347).

III.

Questions Presented.

The questions raised by this petition are:

A. Whether the Circuit Court of Appeals erred in regarding the case of *Irvin* v. *Metropolitan-Hibernia Fire Insurance Co.*, 247 Ill. App. 562, (construing the effect of an Illinois Act of 1869) as controlling law in Illinois and in refusing to reverse the judgment of the court below.

B. Whether the Circuit Court of Appeals erred, in deciding a case of first impression in Illinois, by ruling herein (Trans. 130, 131) that, as a matter of law, an agent's license issued under Sections 587 to 612, Chapter

73, Revised Statutes of Illinois, 1947 (the Illinois Act of 1936 involved herein), operated *per se* to vest the licenseholder with the full authority of a general agent to act on behalf of and to bind the insurance company even though there was proof that no such authority was granted to the licenseholder by the insurance company and no proof that the licenseholder had ever at any time accepted contracts of insurance for the company.

C. Whether in so ruling the Circuit Court of Appeals has rendered a decision contrary to (1) the applicable decisions of this Court, (2) the decisions of the Circuit Courts of various other circuits, (3) the comprehensive body of federal and state case law, and (4) its own decision in *Aetna Life Insurance Co.* v. *Roewe,* 38 Fed. (2d) 393.

IV.

Reasons Relied on for Allowance of the Writ.

1. The United States Circuit Court of Appeals erroneously followed *Irvin* v. *Metropolitan-Hibernia Insurance Co.,* 247 Ill. App. 562, as controlling law in Illinois, and further erroneously enlarged the scope and effect of that decision.

2. Although this was a case of first impression in Illinois, the Circuit Court of Appeals erroneously rejected the applicable decisions of this Court in *Mutual Life Insurance Co.* v. *Hilton-Green,* 241 U. S. 613 and *Sun Insurance Office* v. *Scott,* 284 U. S. 177, and erroneously rendered an isolated ruling, contrary to (a) the decisions of this Court, (b) the applicable decisions of various Circuit Courts of Appeal of the other circuits, (c) the comprehensive body of federal and state case law, and (d) the decision of the same United States Circuit Court of Appeals, for the Seventh Circuit, in *Aetna Life Insurance Co.* v. *Roewe,* 38 Fed. (2nd) 393.

V.

Prayer for Writ of Certiorari.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of the record of all proceedings in the case entitled on its docket No. 9318, *William B. MacDonald and Victoria MacDonald, doing business as Elcar Coach,* Plaintiffs-Appellees, v. *Milwaukee Mechanics' Insurance Company a corporation,* Defendant-Appellant, and that said judgment of the United States Circuit Court of Appeals for the Seventh Circuit be reversed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

Milwaukee Mechanics' Insurance Company,
a corporation,

By DONALD N. CLAUSEN,
HERBERT W. HIRSH,

Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947.

No.

MILWAUKEE MECHANICS' INSURANCE COMPANY, a corporation,

Petitioner,

vs.

WILLIAM B. MacDONALD and VICTORIA MacDONALD, doing business as ELCAR COACH,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

The opinion of the United States Circuit of Appeals, for the Seventh Circuit, appears at pages 128 to 132 of the transcript of record.

II.

Jurisdiction.

The jurisdiction of this Court is invoked in accordance with Section 240 of the United States Code, as amended (United States Code, Title 28, Sec. 347).

III.

Statement of Case.

Our statement of the case appears in the preceding petition under heading I, which is hereby adopted and made a part of this brief.

IV.

Specification of Errors.

1. The Circuit Court of Appeals erred in sustaining the ruling of the United States District Court refusing to set aside the verdict and judgment thereon and refusing to grant the motion of the defendant (petitioner, herein) for a new trial, because it appeared, as a matter of law, that the Illinois Act of 1936 (Sections 587 to 612, Revised Statutes of Illinois, Illinois State Bar Association Edition), under which the agent's license was issued herein, did not *per se* confer the authority of a general agent on the licenseholder and that since there was a question as to the extent of the authority of the alleged agent the United States District Court had erroneously refused to submit the question of the agent's authority to the jury.

2. The Circuit Court of Appeals erred in regarding the case of *Irvin* v. *Metropolitan-Hibernia Fire Insurance Co.*, 247 Ill. App. 562, as the controlling law in Illinois and erroneously failed to follow the applicable decisions of this Court, the decisions of various other Circuit Courts of Appeal, the overwhelming body of federal and state case law, and its own prior decision, all of which support the contention of petitioner. This ruling by the

Circuit Court of Appeals has resulted in a decision contrary to (a) the decisions of this Court, (b) the decisions of the Circuit Courts of Appeal for various other circuits, (c) the decisions of various other federal and state courts, and (d) its own decision in *Aetna Life Insurance Co.* v. *Roewe,* 38 Fed. (2nd) 393. Further, the Circuit Court of Appeals in its decision erroneously extended and enlarged the effect of the decision in *Irvin* v. *Metropolitan-Hibernia Fire Insurance Co.,* 247 Ill. App. 562.

V.

ARGUMENT.

Summary of Argument.

Point A.

The Circuit Court of Appeals Misunderstood and Misapplied Irvin v. Metropolitan-Hibernia Fire Insurance Co., 247 Ill. App. 562, and Erroneously Regarded That Case as Controlling Law in Illinois.

1. The case at bar involved the effect of the Illinois Act of 1936 regulating merely the occupations of insurance agents, brokers, solicitors and company service representatives. The Irvin case involved the effect of the Illinois Act of 1869 regulating the incorporation and affairs of fire insurance companies. The Irvin case is not a controlling precedent.

Irvin v. *Metropolitan-Hibernia Fire Insurance Co.*, 247 Ill. App. 562.

Illinois Act of 1869, Section 37, Chapter 73, Smith-Hurd Revised Illinois Statutes, 1925.

Illinois Acts of 1931, Sections 563 to 584, and 585 to 604, Chapter 73, Illinois State Bar Association Illinois Revised Statutes, 1935.

Illinois Act of 1936, Sections 587 to 612, Chapter 73, Revised Statutes of Illinois, 1947, Illinois State Bar Association Edition.

Illinois Insurance Code of 1937, Section 1065, Chapter 73, Revised Statutes of Illinois, 1947, Illinois State Bar Association Edition.

Chicagoland Agencies, Inc. v. *Palmer, Director of Insurance*, 364 Ill. 13.

2. The Circuit Court of Appeals has erroneously enlarged the extent and scope of the Irvin case.

Point B.

Although This Is a Case of First Impression Under the Illinois Law, the Circuit Court of Appeals Has Erroneously Ruled that the Illinois Act of 1936, and an Agent's License Issued Thereunder Actually per se Confer the Authority of a General Agent, and Has Erroneously Rendered a Decision Contrary to (1) the Decisions of This Court Expressed in Mutual Life Insurance Co. v. Hilton-Green, 241 U. S. 613, and Sun Insurance Office v. Scott, 284 U. S. 177, (2) the Decisions of the Circuit Courts of Appeal for Various Other Circuits, (3) the Comprehensive Body of Federal and State Case Law, and (4) Its Own Decision In Aetna Life Insurance Co. v. Roewe, 38 Fed. (2nd) 393.

Mutual Life Insurance Co. v. *Hilton-Green,* 241 U. S. 613.

Sun Insurance Office v. *Scott,* 284 U. S. 177.

Newsome v. *New York Life Ins. Co.,* 60 Fed. (2nd) 241.

Provident Mutual Life Ins. Co. v. *Parsons,* 70 Fed. (2nd) 863.

New York Life Ins. Co. v. *McCreary,* 60 Fed. (2nd) 355.

Maryland Casualty Co. v. *Seay,* 56 Fed. (2nd) 322.

Aetna Life Ins. Co. v. *Roewe,* 38 Fed. (2nd) 393.

Continental Casualty Co. v. *Erion,* 186 Ark. 1122, 57 Southwestern, Second 1025.

Eikelberger v. *Insurance Company of North America,* 107 Kans. 9, 190 Pacific 611.

Point A.

The Circuit Court of Appeals Misunderstood and Misapplied Irvin v. Metropolitan-Hibernia Fire Insurance Co., 247 Ill. App. 562, and Erroneously Regarded That Case As Controlling Law in Illinois.

The Circuit Court of Appeals in rendering its opinion below relied principally upon the *Irvin* case as stating the case law of Illinois applicable to the facts herein.

1. The case at bar involved the effect of the Illinois Act of 1936 regulating merely the occupations of insurance agents, brokers, solicitors and company service representatives. The Irvin case involved the effect of the Illinois Act of 1869 regulating the incorporation and affairs of fire insurance companies. The Irvin case is not a controlling precedent.

In its opinion, the Circuit Court of Appeals said (Trans. 131):

> "Our problem is to decide what the applicable law, Illinois, holds in regard to the question of the original agency premise."

The Circuit Court of Appeals in considering the effect of the Illinois Act of 1936, then proceeded to make its rulings based principally upon the *Irvin* case, which involved the Illinois Act of 1869 and which case is not a controlling precedent (Trans. 131).

Petitioner submits that neither the Irvin case, nor any other case in Illinois holds that an insurance agent's license issued pursuant to Sections 587 *to* 612, *Chapter* 73, *Revised Statutes of Illinois,* 1947, *Illinois State Bar Association Edition, (being the Illinois Act of* 1936) *operated to confer any authority upon an agent, in the absence of the grant of such authority by the insurance company. This has never been determined in Illinois.*

The *Irvin* case considered the effect of an agent's license issued under an Illinois Act, *then in force,* being the Act of 1869, which was entitled:

"An Act to incorporate and govern fire, marine and inland navigation insurance companies doing business in the State of Illinois."

The pertinent provisions of the Illinois Act of 1869 are set forth in the Appendix (post, pages i and ii).

The 1869 Act, as patently appears from its content, was designed to provide for the incorporation of fire insurance companies in Illinois and to govern the general affairs of both domestic and foreign fire insurance companies. It was an integral part of such statute that matters affecting the representation of fire insurance companies by agents be governed by this statute. For a complete understanding of the total inapplicability of the Illinois Act of 1869 it is necessary to observe the chronological development of subsequent legislation. The Illinois Act of 1869 governed the affairs of fire insurance companies. The Act remained in force and effect until June 29, 1937, when Illinois adopted its present Insurance Code. Section 1065, Chapter 73, Revised Statutes of Illinois, 1947, Illinois State Bar Association Edition, a part of the 1937 Insurance Code, expressly repealed the 1869 Act.

However, *while the Act of* 1869 *was still in full force and effect,* the Illinois Legislature adopted two additional acts in 1931 intended to regulate the occupations of insurance agents and brokers. *It is obvious that the subject matter and purpose intended to be embraced within the* 1931 *Acts was something different from the subject matter and purpose of the* 1869 *Act.* One of the 1931 Acts was concerned with the qualification and licensing of insurance agents, (Sections 563 to 584, Chapter 73, Illinois Bar Association Revised Statutes of Illinois, 1935, set forth hereinafter in the Appendix, post, pages iii to x) and was entitled:

> "An Act providing for the qualification and licensing of insurance agents and solicitors; to prohibit the payment of commission to any unlicensed person and providing penalty for violations and making appropriations therefor."

The other 1931 Act was concerned with similar qualifications and licensing of insurance brokers (Sections 585 to 604, Chapter 73, Illinois Bar Association Revised Statutes, 1935) and was entitled:

> "An Act providing for the qualification and licensing of insurance brokers and solicitors; to prohibit payment of brokerage to any unlicensed person and providing penalties for violation."

These two acts adopted in Illinois on July 8, 1931 remained in full force and effect until January 21, 1936, when the Illinois Legislature adopted the 1936 Act which is involved in the case at bar, and expressly repealed the two 1931 Acts. The 1936 Act was entitled:

> "An Act to provide for the licensing of insurance agents, brokers, solicitors and company service representatives, and to repeal certain acts therein named."

This 1936 statute is now set forth in Sections 587 to 612 of Chapter 73, Revised Statutes of Illinois, 1947, Illinois State Bar Association Edition, some pertinent provisions of which are set forth in the Appendix (post, pages x to xiii). As evidenced from these provisions it is obvious that the intended purpose of the 1936 Act was merely regulatory and was principally intended to determine the qualifications of insurance agents or brokers, to provide for licensing for such persons, to provide reasonable restrictions on the occupation, to prevent "wildcat operations," and to provide penalties and disciplinary procedure in the event of violations of the various requirements. Section 611 of said Chapter 73, contained within this statute, was a repealing section which ex-

pressly repealed the two Acts of 1931 and provided as follows:

> "*Acts Repealed.* 'An Act providing for the qualifications and license of insurance agents and solicitors; to prohibit payment of commission to any unlicensed person and providing penalty for violations and making appropriation therefor,' approved July 8, 1931, as amended, and 'An Act providing for the qualification and licensing of insurance brokers and solicitors; to prohibit payment of brokerage to any unlicensed person and providing penalties for violation,' approved July 8, 1931, as amended, are repealed."

The 1936 Act was a *successor* to the two Acts of 1931. Judicial interpretation of the purpose and intent of the two 1931 predecessor Acts was manifested in *Chicagoland Agencies, Inc.* v. *Ernest Palmer, Director of Insurance,* 364 Ill. 13 (decided in 1936), and it was declared that the purpose of these acts was regulatory of a business or occupation particularly effecting the public interest. The Illinois Supreme Court, in speaking of the purpose of the two 1931 acts, stated the following at page 18:

> "It is obvious that the purpose of each act was to regulate the business of those acting as insurance agents or brokers by maintaining a standard of conduct to be followed by such parties, violations of which rules of deportment would result in the revocation of the agent's or broker's license."

The same may be said of the Act of 1936, the Successor Act.

Thus, it appears that the 1936 Act considered in the case at bar, as well as the two prior and somewhat similar Acts of 1931, were in full force and effect for various periods *before the Act of* 1869 *was repealed in* 1937. This is a conclusive demonstration that the Illinois Act of 1936 was not a successor to nor intended to em-

brace the same purpose or subject matter as the Act of 1869, under which the *Irvin* case was decided, but was an altogether different statute with an altogether different intent and purpose.

The Circuit Court of Appeals failed to observe this basic and controlling distinction. It follows as an elemental proposition that since the *Irvin* case was decided under a statute not involved in the case at bar, and which statute by its history and content is clearly shown to be for a fundamentally different purpose, the *Irvin* case is clearly not a controlling precedent and, as a matter of fact, is totally without application.

In the *Irvin* case, the Director of Trade and Commerce of Illinois issued certificates and agents' licenses under the Act of 1869, as is clearly shown by an examination of the certificates and licenses themselves, which were introduced in evidence in the *Irvin* case as Plaintiff's Exhibits 6 and 7, certified copies of which are contained hereinafter in the Appendix (post, pages xiii to xviii).

The Court of Appeals erred in failing to observe that the *Irvin* case was decided under a statute not involved in the case at bar. Aside from the dissimilar facts of the *Irvin* case, the fact that it construed an altogether different statute, intended to govern the incorporation and operation of fire insurance companies, made that decision devoid of any application as a controlling precedent in the case at bar, which involved the effect of the 1936 Act, intended to regulate merely the *occupation* of insurance agents, brokers, solicitors and company representatives.

The Court of Appeals was grossly in error when it felt obligated to follow and apply the *Irvin* case as a controlling law in Illinois and erroneously failed to consider and apply the decisions of this Court, the

decisions of Circuit Courts of Appeal for the other circuits and the comprehensive body of federal and state case law in cases construing the effect of statutes similar to the statute involved in the case at bar.

2. The Circuit Court of Appeals has erroneously enlarged the extent and scope of the Irvin case.

Although the agent's license in the *Irvin* case was admittedly issued pursuant to the Illinois Statute of 1869, now repealed, the Circuit Court of Appeals, in so erroneous misapplying the case, has further erroneously enlarged the extent and scope of that case. The Circuit Court of Appeals has mistakenly interpreted the *Irvin* case to hold that (Trans. 130, 131), irrespective of the alleged agent's true relationship to the insurance company, as a matter of law, an agent's license issued to a named individual vests such individual with all of the powers of a general agent of the insurance company, with full power to bind the insurance company to contracts of insurance during the period of the license unless revoked; that any revocation is not effective as to an insured, dealing with the licenseholder, unless such insured has notice that the insurance company has revoked or limited such agent's authority; that evidence of the relationship between the alleged agent and the insurance company is not relevant to overcome this agency status. This virtually establishes "an irrebuttable presumption" of the agency. *The Irvin case did not so hold. Petitioner states that no decision coming to its attention so holds.* For the *Irvin* case, or any other case, to so hold would do shocking violence to the long settled principles of agency which recognize the fundamental rule that an alleged agent will be deemed to have only such powers as his principal actually confers upon him or such powers as he may appear to have by reason

of acts of his principal. *There is no question of apparent or implied agency involved in this case, and it is uncontroverted that respondents did not know of the existence of the license, so the critical issue is narrowed to the question only of express or actual authority.*

The full extent of the holding in the *Irvin* case is that where an insurance agent's license is issued under the Illinois Statute of 1869 to a named individual, who was, *in fact, a general agent, and acting as such,* such agent's license will be deemed *prima facie* evidence of his authority to act as a general agent. As the Appellate Court of Illinois said in the *Irvin* case (247 Ill. App. 562) at page 569, in speaking of the effect of the certificates certifying that the alleged agent was authorized to act as agent for the company:

> "These certificates were properly admitted in evidence and *prima facie* established the agency of Lingle to make contracts of insurance, issue policies, to receipt for premiums or extend credit therefor (*Sun Insurance Office of London* v. *Mitchell,* 186 Ala. 420, 65 So. 143)."

The most that can be said of such ruling is that evidence of such agent's license under the special circumstances, merely created a *prima facie* agency status which, like any other *prima facie* evidence or presumption, is capable of being rebutted by evidence to the contrary. When there is evidence to the contrary, a question of fact arises as to the agent's authority *which must* be submitted to the jury. It should be pointed out that in the *Irvin* case the trial court did not instruct the jury that Lingle, as a matter of law, was the duly authorized agent, but *all of the questions of fact went to the jury,* including the extent of Lingle's authority as an agent. This procedure supports the contention of petitioner that the agent's license card was merely *prima facie* evidence

and according to the long settled rule, if there is *any* contrary evidence as to the extent of the agent's authority, a question of fact exists which must be submitted to the jury.

The ruling of the Circuit Court of Appeals is predicated upon an assumed premise, not justified by the record, that the alleged agent was *previously* expressly vested with the powers of a general agent by the insurance company. Unless the Circuit Court of Appeals had assumed such source of original authority, other than the agent's license card, there would be no basis for its holding that the agency status existed until notice was received by the insured that the insurance company had revoked or limited the agent's authority. As the Circuit Court of Appeals said in its opinion (Trans. 131):

> "The District Court would have been justified in submitting the question of Anderson's agency to the jury only if there was reason to believe the insured had notice that defendant had revoked Anderson's authority or had limited it. • • • The only evidence adduced or offered to be adduced in this regard was the relationship between Anderson and defendant, which was not relevant to the burden of overcoming the evidence of agency status created by the state license. We conclude that Anderson was defendant's properly authorized agent and that no error was committed by the court in instructing the jury."

In attempting to apply the *Irvin* case, the Circuit Court of Appeals *failed to observe* that in that case Lingle, the alleged agent, had been acting as general agent of the insurance company and had been issuing policies for several years previous. ***This was not true*** in the case under consideration. The record was devoid of any evidence that the alleged agent, Anderson, had ever before acted as general agent or had ever before accepted a contract of insurance on behalf of petitioner.

Neither the *Irvin* case nor any other case holds that where there is a question as to the agency status of an individual, *who never before acted as a general agent,* the mere issuance of an agent's license will establish an irrebuttable presumption of general agency.

It was implicit in the *Irvin* case that *where one who has been acting as a general agent with the consent of his principal* receives an agent's license, such license will be *prima facie* evidence of the continuance of such general agency and that secret restrictions by his principal will not limit such *already established* general agency. *However, this is far different from saying that an individual who has never before acted as a general agent will be raised to the level of a general agent by the mere issuance of such license by the State.*

Indeed, the essential rationale of the *Irvin* case is that when an insurance company has, for years, held out an individual as a general agent, and then continues to have a general agent's license issued to him, such license will be deemed *prima facie* evidence of his continued authority to act as such general agent.

But even before this rule applies, it is indispensible to show that such an individual had *previously* been acting as a general agent with the consent of his principal.

Sound legal reasoning demands that this rule cannot be materialized out of thin air and be applied to an individual whose past conduct had been totally disassociated with any duties or powers as a general agent.

In considering the mistaken application of the *Irvin* case by the Circuit Court of Appeals, it is pertinent to observe that the Appellate Court of Illinois in the *Irvin* case accepted with approval the decision of the Alabama

Supreme Court in *Sun Insurance Office of London* v. *Mitchell,* 186 Ala. 420, 65 So. 143. An examination of that case reveals that the certificate of the Secretary of State of Alabama showing the issuance of an agent's license to one Myers, was properly admitted in evidence and *prima facie* established the general agency of Myers for the defendant company. Attention is called to the use of the phrase *"prima facie"* by the Supreme Court of Alabama. However, as that opinion disclosed (65 So. 143, 145), Myers *was and had been the uncontroverted general agent* of the insurance company, with authority to countersign and issue policies of insurance. This was not denied by the insurance company. The question there involved was a limited one, namely, whether Myers had authority to write insurance for a town outside of the city named in his general power of appointment. The question was not involved as to whether or not Myers was a general agent. *Whether or not Anderson, in the case at bar, was ever, at any time, a general agent, having authority to accept contracts for insurance, was the primary critical issue in the case.*

Thus it can be readily observed that in both the *Irvin* case and in *Sun Insurance Office of London* v. *Mitchell* the agent's license card was merely *corroborative* of the general agency *previously granted* to the respective agents in those cases.

It is respectfully submitted that the Circuit Court of Appeals, in attempting to follow the *Irvin* case, erroneously enlarged and extended the letter and spirit of the *Irvin* case. This decision of the Circuit Court of Appeals has created a ruling flatly contrary to the *Irvin* case and contrary to the settled law of agency.

Point B.

Although This Is a Case of First Impression Under the Illinois Law, the Circuit Court of Appeals Has Erroneously Ruled That the Illinois Act of 1936 and an Agent's License Issued Thereunder, Actually per se Confer the Authority of a General Agent, and Has Erroneously Rendered a Decision Contrary to (1) the Decisions of This Court Expressed in Mutual Life Insurance Co. v. Hilton-Green, 241 U. S. 613, and Sun Insurance Office v. Scott, 284 U. S. 177, (2) the Decisions of the Circuit Courts of Appeal for Various Other Circuits, (3) the Overwhelming Body of Federal and State Case Law, and (4) Its Own Decision in Aetna Life Insurance Co. v. Roewe, 38 Fed. (2nd) 393.

Since this case was a case of first impression in Illinois and there was no controlling precedent construing the Illinois Statute of 1936, which the Circuit Court of Appeals was required to follow, that Court was free to consider any well reasoned decision establishing a legally-sound sense of direction. There is abundant authority supporting all of the contentions of petitioner in the Court of Appeals. If the Circuit Court of Appeals had followed this overwhelming authority, not only would that court have been required to reverse the judgment below and grant petitioner's motion for a new trial but, as petitioner contends, would have been required to remand the cause to the United States District Court with instructions to direct a verdict in favor of petitioner in accordance with motions made in the court below.

In its opinion the Circuit Court of Appeals expressly rejected the rulings of this Court in *Mutual Life Insurance Co.* v. *Hilton-Green*, 241 U. S. 613, and *Sun Insurance Office* v. *Scott*, 284 U. S. 177. In passing, the Circuit Court of Appeals said (Trans. 130):

"We have examined these cases, but we disagree with the appellant as to their applicability here."

Petitioner submits that the Circuit Court of Appeals not only has erroneously rejected the rule of this Court as announced in these two cases, but has rendered a decision contrary thereto. This Court, in *Mutual Life Insurance Co.* v. *Hilton-Green*, 241 U. S. 613, a proceeding for *certiorari*, reversed the judgment below and remanded the case to the United States District Court to enter a judgment in favor of the insurance company. In passing upon the effect of the Florida statute this Court said the following, at page 623:

> "Section 2765 of the Florida statutes, *ante*, undertakes to designate as agents certain persons who in fact act for an insurance company in some particular; *but it does not fix the scope of their authority as between the company and third persons and certainly does not raise special agents with limited authority* into general ones possessing unlimited power. * * *" (Emphasis ours).

In *Sun Insurance Office* v. *Scott*, 284 U. S. 177, this Court considered an Ohio statute which provided in substance that a person who solicits or takes an application for insurance is the agent for the company, anything in the application or policy to the contrary notwithstanding. The insured there contended that, under the statute, the soliciting agent was a general agent having power to consent to an alteration of the terms of the policy, urging that the statute vested the agent with *greater powers* than were actually conferred upon him by the company. This Court overruled this contention of the insured and said the following, at page 182:

> "On its face the statute does not go so far. We have examined the authorities cited and fail to find that they give it any such force and effect. They do not, as respondent claims, define the scope of

> the agency created by the statute, but leave it to be defined by *applicable principles of common law.*" (Emphasis ours).

The contentions of petitioner herein are not affected by the two cases cited by the Circuit Court of Appeals, namely, *Continental Insurance Co.* v. *Ruckman,* 127 Ill. 364, and *Hartford Fire Insurance Co.* v. *Farrish,* 73 Ill. 166. These two cases are without application if the *Irvin* case fails as a controlling precedent, and if the 1936 Act does not *per se* confer actual authority. The *Continental Insurance* case was similarly based upon the Illinois Act of 1869 and merely held that an alleged agent, who in fact "aided" an insurance company, falls within the express provision of the language of the 1869 statute and since his actions were "availed of" by the insurance company he would be held to be its agent. As the Court there said, at page 378:

> "* * * But after a company has availed itself of the acts of an assumed agent and thus adopted them as its own, there is nothing oppressive in assuming, as against such company, the existence of the relation of principal and agent, and charging the company with responsibility for such acts."

The *Hartford Insurance Company* case adds no support if the *Irvin* case is not controlling. In that opinion, the Illinois Supreme Court merely reiterated the settled rule that secret instructions of the principal to one who had been *acting* as its general agent did not affect his apparent authority unless known by the insured.

In holding that the agent's license, or the 1936 statute under which it was issued, actually conferred upon the license-holder the powers of a general agent, the Circuit Court of Appeals has expressed a rule contrary to the opinions of this Court in the *Mutual Life Insurance Co.* case and the *Sun Insurance Office* case.

Further, the opinion of the Circuit Court of Appeals is contrary to the opinions of the Circuit Courts of Appeal for other circuits. In *Provident Mutual Life Insurance Company* v. *Parsons*, 70 Fed. (2d) 863, the Circuit Court of Appeals for the Fourth Circuit held that the North Carolina statutes did not have the effect of converting a special limited agency into one with general powers.

In *Newsome* v. *New York Life Insurance Company*, 60 Fed. (2d) 241, the Circuit Court of Appeals for the Sixth Circuit construed the Iowa statute making an insurance agent the agent of the insurer and held that the Iowa statute did not fix the scope of the agent's authority. In commenting upon the Iowa statute, the court said at pages 244-245:

> "While the Iowa statute gives to the local agent of an insurance company 'authority to transact all business within the scope of his employment,' it nowhere says, even if it were permissible, what the scope of such employment shall be. This statute of Iowa is no more definite as to the agent's authority than the Florida statute considered in *Mutual Life Ins. Co.* v. *Hilton-Green*, 241 U. S. 613, 36 S. Ct. 676, 60 L. Ed. 1202. That statute made any person soliciting insurance for an insurance company the agent or representative of the company for all 'intents and purposes,' but it was held that as the statute did not 'fix the scope' of the agent's authority, it had no effect upon the true relationship of the parties. In Ohio there is a statute which makes a person who solicits or takes an application for insurance the agent of the insurance company, 'anything in the application or the policy to the contrary notwithstanding.' This statute was construed in *Sun Insurance Office* v. *Scott*, 284 U. S. 177, 52 S. Ct. 72, 73, 76 L. Ed. 72, where it was claimed that the local agent waived a provision of the policy stating that the policy should be void if the property 'be or

> become encumbered by a chattel mortgage.' The court held that the statute did not define the scope of the agency and could not be given the effect of extending the agent's authority to 'matters of contract with respect to the policy, including consent to the alteration of its terms,' and further, that as the Ohio authorities did not give it such effect, the written contract, the policy provision, was controlling. We are compelled to a like view of the Iowa statute and decisions."

In *New York Life Insurance Company* v. *McCreary*, 60 Fed. (2d) 355, the Circuit Court of Appeals for the Eighth Circuit, construed the Nebraska statute making an insurance agent the agent of the insurer. The court recognized that the principles of the general law of agency applied to insurance companies and their agents, and the court said at page 359:

> "These statutes do not sustain plaintiff's contention. They, to be sure, make the soliciting agent the agent of the insurer, but they leave the extent and nature of his authority as such agent of the insurer to be determined by the general law of agency."

The court concluded that the lower court should have directed a verdict in favor of the defendant.

The Circuit Court of Appeals for the Fifth Circuit, came to the identical conclusion in *Maryland Casualty Company* v. *Seay*, 56 Fed. (2d) 322. This case involved the consideration of the Texas insurance statute. The Texas statute required certain procedure, certificates, licenses, and taxes of insurance companies and their agents doing business in the State and inflicted penalties and punishments for violations. The plaintiff sought to recover on an oral contract of insurance. The insurance company defended on the ground that the agent was merely a soliciting agent and had no authority to contract for it. There was no evidence that there was a previous course of dealing with the alleged agent. The

plaintiff contended that under the Texas statutes the agent had authority to accept the contract. As the court aptly pointed out at page 323:

> "The difference between agents to take orders and agents to contract is familiar in every business, including insurance."

The court in passing upon the effect of the Texas statute said further at page 323:

> "For these purposes one doing the things mentioned in the section is to be esteemed an insurance agent, but the section does not purport to abolish soliciting agents nor to enlarge their actual authority."

Further, the Circuit Court of Appeals has rendered a decision contrary to its own decision rendered in 1930 in *Aetna Life Insurance Co.* v. *Roewe,* 38 F. (2d) 393. In that case the Circuit Court of Appeals for the Seventh Circuit undertook to construe paragraph 346 of Chapter 73, Cahill's Illinois Revised Statutes, which made the soliciting agent of any foreign life insurance company the agent of such company to all intents and purposes. The question was involved whether an agent had the power to waive any of the conditions of the policy. The Circuit Court of Appeals reversed a judgment of the District Court and *instructed that court to find in favor of the insurance company.* In construing that statute, the Circuit Court of Appeals said, at page 394:

> "That statute simply means that a foreign corporation, which accepts applications from any solicitor, must also accept him as its agent. Nothing is said in the statute as to whether such agency is a special or general one, or what powers such an agent has. *Those are matters to be determined from the facts in each case under the general law relating to agency."* (Emphasis ours).

While it is recognized that the statute construed in that case was not the same statute as is involved in the case under consideration here, nevertheless the reasoning has equal application. The decision of the Circuit Court of Appeals in the case at bar is, without doubt, inconsistent with its reasoning in this earlier decision.

The Circuit Court of Appeals has rendered a decision contrary to the ruling of the Supreme Courts of Arkansas and Kansas in two decisions which, because of the strikingly similar statutes and facts, should have been extremely persuasive. The Supreme Court of Arkansas in *Continental Casualty Co.* v. *Erion,* 146 Ark. 1122, 57 Southwestern Second 1025, a case which would have provided an accurate legal blueprint, considered the effect of an Arkansas statute strikingly similar to the 1936 Act of Illinois. The Supreme Court of Arkansas in 1933, followed the rule of this Court in *Mutual Life Insurance Company* v. *Hilton-Green,* 241 U. S. 613 and *Sun Insurance Company* v. *Scott,* 284 U. S. 177. Because of the striking similarity in the facts of this case to the facts in the case at bar, it is respectfully contended that this decision is of precise application herein. The plaintiffs there sought to recover on an alleged oral contract of insurance. The defendant insurance company contended that the agent had no authority to enter into the contract. Parallel to the case at bar, it appeared that the insurance company had made a requisition to the Commissioner of Insurance of Arkansas for the issuance of an agent's license to one Paul Collins and a license card had been issued. The license card contained the following language:

> "Therefore, I, the undersigned, Commissioner of Insurance of the State of Arkansas, in pursuance of instructions received from said company, do hereby license Paul Collins of Little Rock, Arkansas, as agent of said company in the conduct of its authorized

business in this State until March 1, 1932, unless his appointment as such be sooner revoked or otherwise terminated."

The requisition and license card were both upon forms supplied by the Arkansas Commissioner of Insurance, all in pursuance of Secs. 6060 and 6062 of the Arkansas Statute under the title "Insurance" as follows:

"§ 6060. No person shall act as agent or solicitor in this State of any insurance company of another State or foreign government, in any manner whatever relating to risks, until the provisions of this act have been complied with on the part of the company or association, and there has been granted to said company or association, by the Insurance Commissioner, a certificate of authority showing that the company or association is authorized to transact business in this state."

"§ 6062. Companies to which certificates of authority are issued, as provided by § 6060, shall from time to time certify to the Insurance Commissioner and State Fire Marshall the names of the agents appointed by them to solicit risks, issue policies or receive applications in this State; and no such agent shall transact business until he has procured from the Insurance Commissioner and the State Fire Marshal a certificate showing that the company has complied with the requirements of this act, and that the person named in said certificate has been duly appointed its agent."

Exactly duplicating the facts herein, it further appeared that the plaintiff had no notice or knowledge either of the requisition for the license or the license subsequently issued to Collins. At the trial a judgment was entered in favor of the plaintiff from which the defendant appealed. The Supreme Court of Arkansas reversed the judgment and dismissed the complaint, stating that there was no valid existing contract and the lower court should have directed a verdict for the defendant.

The facts in the *Continental* case are virtually duplicates of those in the case at bar. The Arkansas statute closely resembles the Illinois statute. The license card issued to Collins in Arkansas and the license card issued to Anderson in Illinois have almost identical wording. The plaintiffs relied principally upon the requisition and the license as the source of express authority in Collins to accept the contract. The Arkansas Supreme Court answered the contention of the plaintiff with respect to the effect of the statute, the requisition and the license as follows at page 1027:

> "Since the requisition and license were not prepared by the appellant company but by the insurance commissioner and are based on the above statutes, they can have no greater or other effect than the statute itself. *It seems settled that statutes such as those quoted supra are not intended to, and do not, have any effect upon the agent's powers to bind the principal, nor do they change the general laws of agency, the powers of an agent being and remaining those only which his principal has expressly or impliedly conferred upon him to be determined by the applicable principles of the common law relating to principal and agent. Mutual Life Ins. Co.* v. *Hilton-Green,* 241 U. S. 613, 36 S. Ct. 676, 60 L. ed. 1202; *Sun Ins. Office* v. *Scott,* 284 U. S. 177, 52 S. Ct. 72, 76 L. ed. 229; *Eikelberger* v. *Ins. Co. of N. A.* (1920), 107 Kan. 9, 190 P. 611; *Maryland Cas. Co.* v. *Seay* (C.C.A.), 56 F. (2nd) 322; *Wood* v. *Firemen's Fire Ins. Co.,* 126 Mass. 316 • • • " (Italics ours).

The opinion of the Circuit Court of Appeals is also contrary to *Eikelberger* v. *Insurance Company of North America,* 107 Kans. 9, 190 Pac. 611. That matter came on for rehearing after the Supreme Court of Kansas had previously reversed a judgment in favor of the plaintiff. This was a suit on a fire insurance policy. The defendant contended that the policy was inoperative at the time of

the loss. The insured had contended that the agent of the defendant had waived a provision in the policy which suspended the operation during the default of a note given for the premium. The insurance company contended that the agent did not have authority to make an agreement with respect to the defaulted premium which would bind the company. On this rehearing the Department of Insurance of Kansas, as *amicus curiae*, contended that the authority given to the insurance agent by the Kansas statutes and by the license issued by the Insurance Department vested the agent with authority to enter into a binding agreement on behalf of the company. The two sections of the Insurance Act of the State of Kansas providing for the appointment of an agent by an insurance company and the issuance of a license to such agent are as follows:

> "Sec. 5178. It shall be unlawful for any person, company or corporation to transact the business of insurance or guaranty, or do any act toward transacting such business, unless the said person, company or corporation shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the superintendent of insurance in conformity with the provisions of the laws of this state relative to insurance and guaranty. * * *
>
> "Sec. 5179. Any insurance company not organized under the laws of this state may appoint one or more general agents in this state, with authority to appoint other agents of said company in this state. A certified copy of such appointment shall be filed with the superintendent of insurance, and agents of such company appointed by such general agent shall be held to be the agents of such company as fully, to all intents and purposes, as if they were appointed directly by the company. Agents for any such company in this state may be appointed by the president, vice president, chief manager or secretary thereof, in writing, with or without the seal of the company; and when so appointed, shall be held to

be the agents of such company as fully as if appointed by the board of directors or managers in the most formal mode."

The Kansas Supreme Court in upholding the contention of the Insurance Company that the licensing statute and the license issued thereunder were merely regulatory and did not of themselves confer authority upon an agent said the following at pages 612 and 613:

"* * * The law of agency is a very large subject and one which could scarcely be touched in a single opinion, however much we might be disposed to display our learning on that subject. It must suffice here to say that the license issued by the insurance department to a local insurance agent, at the request of his principal, is merely the state's permit for him to ply his business, and a tacit admission by the insurance superintendent that so far as he is advised the licensee is an honest man or at least a man of fair business reputation. One effect of the statute—perhaps its main purpose—is to exercise the state's right, through its superintendent of insurance, to bar a known swindler or other disreputable or untrustworthy person from posing as an insurance agent to the detriment of the public. *Hauser* v. *Ins. Co.*, 206 N. Y. 455, 100 N. E. 52, 42 L. R. A. (N. S.) 1139, 1142, Ann. Cas. 1914B, 263.

"There is no question of any secret agreement between the company and its local agent in this lawsuit.

"Substantially the same point raised by the insurance department has required the attention of other courts, but none of them appear to have had any difficulty in reaching the same conclusion which we do. *Wood* v. *Fireman's Insurance Co.*, 126 Mass. 316; *Barry, etc., Lumber Co.* v. *Insurance Co.*, 136 Mich. 42, 98 N. W. 761; *Lauze* v. *Insurance Co.*, 74 N. H. 334, 68 Atl. 31.

"*It must be held, therefore, that a license issued by the State Insurance Department to the local agent of an insurance company at the company's request is*

merely a regulatory permit; but neither the license itself nor the statute concerning its issue has the effect of defining the agent's powers to bind his company, nor do they change the general law of agency." (Italics ours).

Again, the similiarity of the Kansas statute to the Illinois Licensing Act renders this carefully considered opinion of the Kansas Supreme Court particularly persuasive in the case at bar.

The decision of the Circuit Court of Appeals herein is thus shown to stand as an isolated decision unsupported by any prior applicable Illinois decision and contrary not only to (a) the prior rulings of this Court, (b) the Circuit Courts of Appeal of various other circuits, (c) its own prior ruling, and (d) the comprehensive body of federal and state case law, but basically repugnant to the fundamental and long settled principles of the law of agency.

CONCLUSION.

For the reasons hereinabove set forth, we respectfully submit that this Court should grant to the petitioner its writ of *certiorari* and that upon a full hearing of this cause upon the return of said writ, the judgment of the United States Circuit Court of Appeals for the Seventh Circuit should be reversed, with directions to reverse the judgment of the court below and enter judgment for petitioner, or in the alternative with directions to remand the cause to the United States District Court, for the Northern District of Illinois, Eastern Division, for a new trial.

Respectfully submitted,

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HERBERT W. HIRSH,
Counsel for Petitioner.

APPENDIX.

The Illinois Act of 1869.

Portions of Section 37, Chapter 73, Smith-Hurd Revised Statutes of Illinois, 1925:

"*Foreign companies—Agent—Service of process—Certified copy of Charter filed—Deposits—Statements.* It shall not be lawful for any insurance company, association or partnership incorporated by or organized under the laws of any other state of the United States, or any foreign government, for any of the purposes specified in this Act, directly or indirectly, to take risks or transact any business of insurance in this State unless possessed of the amount of actual capital required of similar companies formed under the provisions of this Act; nor shall it be lawful for any mutual insurance company of any other state to transact any kind of business within this State other than that prescribed by section 13 of this Act, unless said company is possessed of an amount of cash assets over and above all liabilities, including re-insurance reserve, equal to the amount of capital stock required of stock companies; and any such company desiring to transact any such business as aforesaid, by any agent or agents in this State, shall first appoint an attorney in this State on whom process of law can be served, and file in the office of the Director of Trade and Commerce a written instrument duly signed and sealed, certifying such appointment, which shall continue until another attorney be substituted, and in case of death or removal of said attorney so designated by said company, service of any process from any court in this State on the Director of Trade and Commerce during said vacancy shall be sufficient until said company shall appoint another attorney as required by this Act; and any process issued by any court of record in this State and

served upon such attorney by the proper officer of the county in which such attorney may reside, or may be found, shall be deemed a sufficient service of process upon such company, but service of process upon such company may also be made in any other manner provided by law.

• • •

"Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this section, directly or indirectly, in taking risks or transacting the business of fire and inland navigation insurance in this State, without procuring annually from the Director of Trade and Commerce a certificate of authority, stating that such company has complied with all the requisitions of this Act which apply to such companies and the name of the attorney appointed to act for the company.

• • •

"Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town or village in which the company is located, and the state or government under the laws of which it is organized. The term 'agent' or 'agents' used in this section shall include an acknowledged agent, surveyor, broker or any other person or persons who shall in any manner aid in transacting the insurance business of any insurance company not incorporated by the laws of this State.

"The provisions of this section shall apply to all foreign companies, partnerships, associations and individuals, whether incorporated or not. All insurance companies, associations or partnerships, incorporated by or organized under the laws of any other state of the United States, or any foreign government, transacting the business of fire or marine insurance, or any other kind of insurance in this State, shall make annual statements of their condition and affairs to the Director of Trade and Commerce, in the same manner and in the same form as similar companies organized under the laws of this State."

The Illinois Act of 1931.

(Sections 563 to 584, Chapter 73 Revised Statutes of Illinois, 1935, Illinois Bar Association Edition.)

"563. *Agents defined—Application of Act.* The term 'agents' as used in this Act shall include any person, partnership, association or corporation, who is a resident of this State or which is organized under the laws of this State and authorized by law to do an insurance agency business and who or which is authorized in writing by any insurer lawfully qualified to transact business in this State, to solicit, negotiate or effect contracts of insurance, including surety and fidelity bonds, directly from the assured or a representative of the assured on behalf of any insurer.

"This Act shall not apply to fraternal beneficiary societies, nor to agents of companies organized or operating under an Act entitled 'An Act to organize and regulate the business of life insurance,' approved March 26, 1869, as amended, nor to farm mutual insurance companies organized under the laws of Illinois, nor to any executive or traveling salaried employee of any insurer.

"564. *Commissions to unauthorized agents—Certificate of authority.* After March 1, 1932, no insurer authorized or permitted to do business in this State, shall pay any money or commission or brokerage or give or allow anything of value to any person, partnership, association or corporation not a duly authorized agent or broker for or because of his or its negotiating a contract of insurance including fidelity and surety bonds, unless such person, partnership, association or corporation is authorized to act as an agent or broker. After March 1, 1932, no such person, partnership, association or corporation shall act as an agent or broker in the solicitation or effecting of contracts of insurance or receive for or because of negotiating a contract of insurance including fidelity and surety bonds, any money, commission or brokerage or anything of value from any

insurer authorized or permitted to do an insurance business in this State without first procuring a certificate of authority so to act from the Director of Trade and Commerce.

"565. *Issuance of certificate of authority.* The Director of Trade and Commerce at the written request of any insurer authorized by law to transact business in this State shall issue such agent's certificate of authority to a person, partnership, association, or corporation applying therefor, who or which is trustworthy and is competent to transact an insurance agency business in such manner as to safeguard the interests of the insurer and the public. Immediately upon receipt of an application for a certificate of authority by the Director of Trade and Commerce, he shall issue a temporary certificate for a period not to exceed thirty (30) days in order that the applicant may qualify under the provisions of this Act as hereinafter provided.

"566. *Application—Contents.* Before any agent's certificate of authority shall be issued by the Director of Trade and Commerce there must be filed in his office a written application therefor. Such application shall be in the form prescribed by the Director of Trade and Commerce and must set forth:

"(a) The name and address of the applicant, and if the applicant be a partnership or association, the name and address of each member thereof, and if the applicant be a corporation, the name and address of each of its officers and directors;

"(b) Whether any certificate of authority as agent or broker has been issued or refused theretofore by the Director of Trade and Commerce to the applicant, and, if the applicant be an individual, whether any such certificate has been issued theretofore to any partnership or association of which he was or is a member or to any corporation of which he was or is an officer or director, and if the applicant be a partnership or association, whether any such certificate has been issued theretofore to any member thereof, and, if the applicant be a

corporation, whether any such certificate has been issued theretofore to any officer or director of such corporation;

"(c) The business in which the applicant has been engaged for the year next preceding the date of application, and, if employed by another, the name and address of such employer;

"(d) Such information as the Director of Trade and Commerce may require of applicants to enable him to determine their trustworthiness and competency to transact the insurance agency business in such manner as to safeguard the interests of the insurer and the public.

"567. *Applicant's references.* The applicant shall be vouched for by two reputable citizens of this State preferably insurance agents or insurance company executives, setting forth:

"(a) That the applicant is personally known to them;

"(b) That the applicant has had experience or instruction in the general or some special lines of insurance;

"(c) That the applicant is of good business reputation and is worthy of a certificate of authority;

"(d) That the applicant proposes to engage actively in the business of insurance.

"568. *Personal examination.* The Director of Trade and Commerce, may, whenever in his judgment it appears necessary or advisable, and also in order to determine the trustworthiness and competency of such applicant for a certificate of authority or for the renewal of a certificate of authority to transact the insurance agency business, require such applicant to submit to a personal examination, either oral or written, which shall be held in the county in which the applicant resides or has his principal place of business.

"569. *Application to be signed and verified.* Except as otherwise provided in this section, an application for an agent's certificate of authority must be signed and verified by the applicant and, if made by a partnership,

association or corporation by each member, officer or director thereof to be authorized thereby to act as an agent.

"570. *Certificates to corporations or partnerships.* A certificate of authority issued to a corporation, shall authorize not less than two of the officers or directors of the corporation officially designated for the purpose by the corporation to act for it, each of whom must be qualified to obtain a certificate of authority to act as an agent, and for each of whom a fee must be paid at the times and at the rates specified for individual applicants. A certificate of authority issued to a partnership or association shall authorize not less than two members thereof officially designated for the purpose by the partnership or association to act for it, each of whom must be qualified to obtain a certificate of authority or act as an agent and for each of whom a fee must be paid at the times and at the rates specified for individual applicants.

"571. *Fee.* The fee to be paid to the Director of Trade and Commerce by an individual applicant for an agent's certificate of authority at the time the application is made and annually for the renewal thereof shall be two ($2.00) dollars for each company represented, such charge to be in lieu of all or any other fees charged for issuing certificate of authority to such agent: (*Provided* that if an original application for an agent's certificate of authority is made after December 31, and before March 1, of the same license year, the fee to be paid by the individual applicant to the Director of Trade and Commerce shall be fifty per cent of the annual fee herein specified.)

"572. *Expiration and renewal.* Every agent's and solicitor's certificate of authority shall expire on the first day of March, but if an application for the renewal of any such certificate shall have been filed with the Director of Trade and Commerce before March first of any year the certificate of authority sought to be renewed shall continue in full force and effect until the issuance

by the Director of Trade and Commerce of the new certificate applied for or until five days after the Director of Trade and Commerce shall have refused to issue such new certificate and shall have served notice of such refusal on the applicant and all companies represented by such agent. Service of such notice may be made either personally or by mail, and, if by mail, shall be deemed complete if such notice is deposited in the post office, postage prepaid, directed to the applicant at the place of business specified in the application, and to the home or department office of all companies represented by such agent.

"573. *Revocation—Refusal to renew.* A certificate issued under this Act may be revoked and/or a renewal thereof refused by the director, if after due investigation and a hearing either before him or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that the holder of such certificate

"(a) has violated any provision of the insurance law; or

"(b) has intentionally made a material misstatement in the application for such certificate; or

"(c) has been guilty of fraudulent or dishonest practices; or

"(d) has demonstrated his incompetency or untrustworthiness to transact the insurance agency business.

"574. *Renewal after revocation.* No individual and no member of a partnership or association and no officer or director of a corporation whose certificate of authority is so revoked shall be entitled to any certificate of authority under this Act for a period of one year after such revocation, or, if such revocation be reviewed by *certiorari* proceedings, for one year after the final determination thereof affirming the action of the director in revoking such certificate. If any such certificate held by a partnership, association or corporation be so revoked, no member of the partnership or association or officer or director of the corporation whom the Director of

Trade and Commerce determines was personally at fault in the matter on account of which the certificate was revoked shall be entitled to such a certificate for the same period of time.

"575. *Notice of revocation or refusal to renew.* If a certificate be revoked and/or a renewal thereof refused by the Director of Trade and Commerce notice thereof shall forthwith be served on the holder of such certificate and all companies for which he is licensed, either personally or by mail, and, if by mail, such service shall be complete if such notice be deposited in the post office, postage prepaid, addressed to the holder of such certificate, at the place of business specified in the certificate and to the home or department office of all companies for which he is licensed.

"576. *Review by certiorari.* The action of the Director of Trade and Commerce in granting or refusing to grant or to renew a certificate of authority or in revoking or refusing to revoke such a certificate shall be subject to review by writ of *certiorari*, at the instance of the applicant for such certificate, the holder of a certificate so revoked or the holder of any such certificate or the person aggrieved. If the Director of Trade and Commerce shall revoke or shall refuse to renew the certificate of authority of any agent issued under this Act and such agent shall apply for a writ of *certiorari* to review such action, the certificate of authority of such agent shall be deemed to be in full force and effect for all purposes, including the right to renewal, until the final determination of such *certiorari* proceedings and all appeals therefrom, *provided* the fee for such certificate be paid.

"577. *Solicitors—Not to represent themselves as agents of insurance company—License—Clerical help.* Any agent duly authorized as such, and representing one or more insurers may employ such solicitors as he may desire to represent him and his agency. Such solicitors shall not represent themselves, by advertisement or otherwise, as agents of insurance companies for which their employer may be the authorized agent, and such solicit-

ors shall in all instances represent themselves only as solicitors for said authorized agent. The fee for each solicitor's license shall be two dollars ($2.00) at the time of the original application, and one dollar ($1.00) annually upon renewal thereof. The issuance of a solicitor's license shall be limited to persons who shall be residents of the State of Illinois. Nothing in this section shall be held to extend to or include any clerical help that may be necessary in performing any of the functions provided for agents, general district, State or special agents nor to require such clerical help to be licensed in the same manner as their employers. No such clerical help shall solicit insurance unless licensed as an agent or solicitor.

"578. *Deposits by foreign companies.* Whenever the existing or future laws of any other state of the United States shall require of any insurance companies, incorporated by or organized under the laws of this State and having agencies in such other state, or of the agents thereof, any deposit of securities in such state for the protection of policy-holders or otherwise, or any payment for taxes, fines, penalties, certificates of authority, license fees or otherwise, greater than the amount required for such purposes from similar companies of other states by the then existing laws of this State, then and in every such case, anything in this Act to the contrary notwithstanding, any insurance companies of such states establishing or having heretofore established an agency or agencies in this State, shall be and are hereby required to make the same deposit for a like purpose, with the State Treasurer of this State, and to pay to the Director of Trade and Commerce, for taxes, fines, penalties, certificates of authority, license fees or any other obligation, an amount equal to the amount of such charges and payments imposed by the laws of such other state upon the companies of this State and the agents thereof.

"579. *Penalty.* Any person, partnership, association or corporation violating any of the provisions of this Act shall, in addition to any other penalty provided herein, upon conviction, be fined not less than one hun-

dred dollars ($100.00) nor more than five hundred dollars ($500.00) for each offense.

"580. *Property outside the State.* This Act shall not apply to contracts of insurance upon property not located within this State.

"581. *Repeal.* All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

"582. *Partial invalidity.* If any section, subdivision, paragraph, sentence or clause of this Act is for any reason held invalid or to be unconstitutional, such decision shall not affect the remaining portions of this Act or any section or part thereof.

"583. *Appropriation.* There is appropriated to the Department of Trade and Commerce for the biennium commencing July 1, 1931, the sum of $50,000.00 per annum, or so much thereof as may be necessary for administering the provisions of this Act.

"584. *Subject to State Finance Act.* The appropriation herein made is subject to the provisions of "An Act in relation to State finance," approved June 10, 1919, as amended."

The Illinois Act of 1936.

(Portions of Sections 587 to 612 of Revised Statutes of Illinois, 1947, Illinois State Bar Association Edition.)

588. *Terms defined.*

The term "agent", as used in this Act, means any person, partnership, association or corporation, who or which solicits, negotiates or effects in this State, on behalf of any company, contracts for insurance of any of the following kinds, namely:

Life, Accident, Health, Casualty, Fidelity, Surety, Fire and Marine.

The term "broker", as used in this Act, means any person, partnership, association or corporation, who or which for money, commission, brokerage or anything of

value, acts or aids in any manner in the solicitation or negotiation, on behalf of the assured, of contracts of any of the kind or kinds hereinabove enumerated.

The term "solicitor", as used in this Act, means any person engaged in the solicitation of contracts of the kind or kinds hereinabove enumerated for any agent or broker.

The term "company service representative", as used in this Act, means any person who acts in this State for or on behalf of any company in the solicitation, inspection or servicing of risks assumed or to be assumed by said company.

The term "Director", means the Director of Insurance.

The term "Department", means the Department of Insurance.

590. *License required—Issuance only to citizens or intended citizens.*

No person, partnership, association or corporation shall act as an agent, broker, solicitor or company service representative, without first procuring a license so to act from the Director.

No license shall be issued to any person who is not a citizen of the United States or who has not made a declaration of intention to become a citizen or who, having made such declaration of intention, has not filed a petition for naturalization within thirty days after becoming eligible to do so.

591. *Payment of commissions and brokerage—Violation—Suspending license.*

A company may pay money, commission or brokerage, or give or allow anything of value, for or on account of the solicitation or negotiation of contracts of the kind or kinds enumerated in Section 2 of this Act, on property or risks in this State, only to its duly licensed agent or representative, or to a duly licensed broker. • • •

If the Director shall be informed upon investigation, complaint or otherwise that any company, agent, broker, solicitor or company service representative has wilfully violated the provisions of this section he shall notify such company, agent, broker, solicitor or company service representative of the specific charges and shall in such notice fix a date not less than ten days after the date of the mailing or delivery thereof, for a hearing before him or before an employee of the Department specially designated for that purpose, whose report he may adopt. The Director, or the employee so specially designated, shall have power to administer oaths. Evidence and testimony pertaining to such charges may be introduced at such hearing by the Department, any complainant, and the licensee. If the Director finds that the charges so made are sustained by the evidence and testimony presented and introduced, he may suspend the license to transact business in this State for a period of time not to exceed six months. This proceeding shall be in addition to and shall not supersede or preclude any proceeding taken in accordance with Section 13 of this Act. The hearing shall not be open to the public, but shall be limited to the parties interested and their witnesses.

592. *Application for license.*

Applications for an agent's or a broker's license shall be filed in the office of the Director, in writing and in the form prescribed by him. • • •

(The statute proceeds to prescribe the contents of such application and among the requirements is the following:)

(f) A statement by two reputable citizens of this State, preferably those engaged in the insurance business, setting forth that the applicant, if an individual, is personally known to them, and that each person designated to act for it, if the applicant is a partnership, association or corporation, is personally known to them, is of good business reputation and is worthy of license;

596. *Examination for license.*

(The statute requires the applicant, under certain circumstances, to submit to a written examination and provides that such examinations be conducted under the rules and regulations of the Insurance Department.)

609. *Violation of provisions.*

Any person, partnership, association or corporation violating any of the provisions of this Act shall, in addition to any other penalty provided herein, upon conviction, be fined not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000) for each offense.

Plaintiffs' Exhibit No. 7

in

Irwin v. Metropolitan-Hibernia Insurance Co.,

247 Ill. App. 562.

Agent's License.

Fire, Marine, Inland Navigation. State of Illinois, Department of Trade and Commerce, Division of Insurance. (Copy) 1924.

Number 7182.

This is to certify that Metropolitan-Hibernia Fire Ins. Co., located at Chicago, Illinois has complied with "An Act to Incorporate and govern Fire, Marine and Inland Navigation Insurance companies doing business in the State of Illinois"; approved March 11, 1869, and is authorized to transact business thereunder in the State of Illinois in accordance with license issued to said company until such authority be revoked, and that Irl L. Lingle (Name of Agent) of East St. Louis, having been appointed by said company as its agent, is hereby licensed to act as agent for said company to transact its business under said Act of Illinois according to law until the thirty-first day of January, 1925, unless this license be sooner revoked or otherwise terminated.

Dated at Springfield, Illinois, Feb. 1, 1924.

Clifford Ireland
Director of Trade and
Commerce, State of Illinois

Attest: Alex J. Johnson
Superintendent of Insurance.

(Copy)

Requisition Number 7182 Fire, Marine, Inland Navigation, State of Illinois, Department of Trade and Commerce, Division of Insurance. 1924.

This is to certify that Metropolitan-Hibernia Fire Ins. Company of Chicago, Illinois has appointed Irl L. Lingle of East St. Louis, agent for the transaction of its authorized business of insurance in the State of Illinois for the term ending January 31, 1925, unless such appointment be sooner revoked.

Dated at Chicago, Illinois, this 31st day of January, 1924.

Metropolitan-Hibernia Fire Ins Co.
By George Essig Secy.
(Officer or Authorized Agent)
Fee $0.50 Street No. 175 W. Jackson Blvd.

State of Illinois, Department of Trade and Commerce, Division of Insurance. Springfield, Illinois, September 17, 1926.

I, the undersigned, Director of Trade and Commerce of the State of Illinois do hereby certify that the annexed instrument is a full, true and correct copy of Requisition Number 7182 and Agent's License Number 7182 for Irl L. Lingle to represent Metropolitan-Hibernia Fire Insurance Company, Chicago, Illinois, for the term ending January 31, 1925 now on file in and forming a part of the records of this department.

In Testimony Whereof, I hereto subscribe my name and affix the Seal of my office at Springfield, the day and year first above written.

H. U. Bailey,
Director of Trade and Commerce.
Attest: Alex J. Johnson,
Superintendent of Insurance.

(Seal of Director of Trade and Commerce)
C. D. - 88

Copy of Certificate

State of Illinois,
St. Clair County—ss.

I, Charles G. Becker, Clerk of the Circuit Court in and for said County of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of Plaintiffs' Exhibit 7 in a cause lately pending in the Circuit Court of St. Clair County, Illinois, wherein Rebecca Irvin, et al. are Plaintiffs, and Metropolitan Hibernia Fire Insurance Company is Defendant. Case No. 16844 as the same appears of record in my office, in ..... record, page ....., of the records of said Court. And I further certify that I am the custodian of said Records.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Court, at office, in Belleville, Illinois, this twenty-ninth day of April A. D. 1948.

(Seal) Charles G. Becker, Clerk

Plaintiffs' Exhibit No. 6
in
Irwin v. Metropolitan-Hibernia Insurance Co., 247 Ill. App. 562.

(Copy)

Agent's License.

Fire, Marine, Inland Navigation, State of Illinois, Department of Trade and Commerce, Division of Insurance. 1925.

Number 25190.

This is to certify that Metropolitan Hibernia Fire Ins. Co. located at Chicago, Ill. has complied with "An Act to Incorporate and govern Fire, Marine and Inland Navigation Insurance companies doing business in the State of Illinois"; approved March 11, 1869, and is authorized to transact business thereunder in the State of Illinois in accordance with license issued to said company until such authority be revoked, and that Irl L. Lingle of East St. Louis, Ills., having been appointed by said company as its agent, is hereby licensed to act as agent for said company to transact its business under said Act of Illinois according to law until the thirty-first day of January, 1926, unless this license be sooner revoked or otherwise terminated.

Dated at Springfield, Illinois, Feb. 1, 1925.

Clifford Ireland
Director of Trade and Commerce
State of Illinois.

Attest: Alex J. Johnson
Superintendent of Insurance.

(Copy)

Requisition Number 25190, Fire, Marine, Inland Navigation, State of Illinois, Department of Trade and Commerce, Division of Insurance. 1925.

This is to certify that the Metropolitan Hibernia Fire Ins. Co. of Chicago, Ill. has appointed Irl L. Lingle of East St. Louis, Illinois, agent, for the transaction of its authorized business of insurance in the State of Illinois for the term ending January 31, 1926, unless such appointment be sooner revoked.

Dated at Chicago, Ills., this 29th day of January, 1925.

By George Essig, Secy.
(Officer or Authorized Agent)

Fee $0.50 Street No. 175 W. Jackson Blvd.

State of Illinois, Department of Trade and Commerce, Division of Insurance. Springfield, Illinois, September 17, 1926.

I, the undersigned, Director of Trade and Commerce of the State of Illinois do hereby certify that the annexed instrument is a full, true and correct copy of Requisition Number 25190 and Agent's License Number 25190 for Irl L. Lingle to represent Metropolitan-Hibernia Fire Insurance Company, Chicago, Illinois, for the term ending January 31, 1926 now on file in and forming a part of the records of this department.

In Testimony Whereof, I hereto subscribe my name and affix the Seal of my office, at Springfield, the day and year first above written.

H. U. Bailey
Director of Trade and Commerce.

Attest: Alex J. Johnson
Superintendent of Insurance.

(Seal of Director of Trade and Commerce)

C. D. - 88

Copy Certificate

State of Illinois,
St. Clair County—ss.

I, Charles G. Becker, Clerk of the Circuit Court in and for said County of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of Plaintiffs' Exhibit 6 in a cause lately pending in the Circuit Court of St. Clair County, Illinois, wherein Rebecca Irvin et al are Plaintiffs, and Metropolitan Hibernia Fire Insurance Company is Defendant. Case No. 16844 as the same appears of record in my office, in ..... record ....., page ....., of the records of said Court. And I further certify that I am the custodian of said Records.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Court, at office, in Belleville, Illinois, this twenty-ninth day of April A. D. 1948.

(Seal) Charles G. Becker, Clerk.